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CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP 1600 ODS TOWER 601 SW SECOND AVENUE PORTLAND, OR 97204			FISH, JAMIESON W.	
			ART UNIT	PAPER NUMBER
			2617	

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/819,126	ERRICO, JAMES H.	
	Examiner	Art Unit	
	Jamieson W. Fish	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 October 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11, 13-15, 17-53, 57 and 59-69 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11, 13-15, 17-53, 57, 59-69 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Response to Arguments

The applicant argues (1) that Graves does not anticipate where desirability is increased by based upon the first option, the desirability is decreased based upon the second option, and the desirability remains the same based upon a third option (See Remarks Pg 21 Paragraph 3); (2) That there is no suggestion in Graves that the data itself is hierarchical in structure.

Applicant's arguments with respect to claims **1** and **50** have been considered but are moot in view of the new ground(s) of rejection. With respect to argument (1), Graves teaches where the neural network uses preference values of 1 through 10 (See Graves Fig. 5 and 6). However, as discussed in the previous Office Action with respect to rejection of claim **5** and **17**, the combination of Graves with Herz is obvious and Herz teaches using preferences values of 0-10 and negative values, thus the new limitations of claim 1 are met by this combination (See Herz Col. 10 lines 51-60 weights can take on values 0-10 and negative values).

Applicant's arguments with respect to argument (2) have been fully considered, but they are not persuasive. With respect to from the relevant portions of the specification (Portions describing Figs. 51-80) it appears as though the hierachal structure of the claimed invention involves performing Eqn. 1 of Graves (See Col. 8 lines 20-25, This operation is a weighted sum) on a set of data to determine attribute values of a show, and subsequently performing Eqn 1 of Graves on the resulting attribute values to determine the grade of a show. Claims **19** and **33** perform this

operation an additional time. Graves teaches generally that a weighted sum can be performed at multiple layers, each layer having any combination inputs (See Fig. 8 Col. 8 lines 31-51).

Double Patenting

1. Applicant is advised that should claims **33-38** be found allowable, claims **19-24** will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

2. Applicant is advised that should claims **40-44** be found allowable, claims **45-49** will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). Claim **45** simply repeats the limitations found in claim **40**.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims **1-9 17-18, 40-53** are rejected under 35 U.S.C. 103 as being anticipated by Graves (US 5,410,344) in view of Herz (US 6,020,883).

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4. Regarding claim 1, 4, 5, Graves teaches a method for selecting at least one of audio and video comprising (See Abstract): (a) receiving user attribute information corresponding to user preferences wherein said user attribute information includes preferences (See Fig. 4 Step 36 Col. 4 lines 41-51 Col. 6 lines 17-52); (b) receiving program attribute information corresponding to said at least one of said audio and video, where said program attribute information corresponds with said user preferences, where at least one of said user attribute information and said program attribute information includes hierarchical levels (See Fig. 4 Step 34, Fig. 8 Col. 6 lines 17-52, Col. 8 lines 5-65 x (Top level) is determined based on sum of A's (lower level)); and (c) determining the desirability of said at least one of said audio and video based upon said preferences (See Fig. 4 Step 40 Col. 6 lines 17-52), wherein said preferences selectively include data indicative of at least a first, a second, and a third option; (i) said first option including a positive preference indicative of the desirability of said at least one of audio and video; (ii) said second option including a preference indicative of non-desirability of said at least one of audio and video; (iii) said third option including a preference indicative of indifference desirability of said at least one of audio and video (From the specification Page 122 lines 5-23, Page 123 lines 1-5 Data indicative of options is a value and the option is determined simply by a numeric range the value falls within. Preferences in Graves' system receive are weighted (See Col. 7 lines 45-66 Col. 8 lines 5-46). Various weights would inherently fall within various numeric ranges (options). Thus, Graves meets the limitations of the claim). Graves fails to disclose where program attribute weights can take on negative or a neutral (0) value (See Figs. 5 and 6

Col. 8 Eqn. 1). However, using negative or neutral program attribute weights in television program ranking systems is well known in that art as taught by Herz (See Col. 10 lines 31-63 cv is equivalent to Graves' w). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Graves so that user could assign negative values to attribute weights as taught by Herz to allow the user to express a level of aversion to a program attribute (See Herz Col. 10 lines 60-63).

5. Regarding claim 2, Graves teaches wherein said first option is a non-binary preference value (See Fig. 5 Col. 7 Lines 49-54 Weights are based on numbers with values 1-10).

6. Regarding claim 3, Graves teaches wherein said second option is a non-binary preference value (See Fig. 5 Col. 7 Lines 49-54 Weights are based on numbers with values 1-10).

7. Regarding claim 6, Graves teaches wherein said preferences are adjustable by a user (See Fig. 5, Fig. 6 and Col. 6 lines 60-68, Col. 7 lines 1-36).

8. Regarding claim 7, Graves teaches wherein said preferences include at least one default value (See Col. 5 lines 44-50 Default values are inherent to initial loading of personal preference value).

9. Regarding claim 8, Graves teaches wherein said preferences are adjustable by a user (See Fig. 5, Fig. 6 and Col. 6 lines 60-68, Col. 7 lines 1-36).

10. Regarding claim 9, Graves teaches wherein said determining results in a value (See Col. 7 lines 45-66 Col. 8 lines 5-46 Programs evaluated by Graves' system receive a grade (value) based on an equation).

11. Regarding claim 17, Graves teaches a method for selecting at least one of audio and video comprising (a) receiving user attribute information corresponding to user preferences, wherein said user attribute information includes hierarchical levels so that data at a second level is included with data at a first level (See Fig. 4 Step 34, Fig. 8 Col. 6 lines 17-52, Col. 8 lines 5-65), wherein at least a portion of said user attribute information include preference elements characterized by a set selected from at least the following (See Col. 7 lines 37-64 and Col. 8 lines 1-51) Preference elements are weights in Graves system): (i) a neutral preference indicating indifference to said preference element (See Fig. 5 Not Appropriate); (ii) a nominal preference indicating at least one of desire for and disdain of said preference element (See Fig. 5 Preferences can be ranked 1-10); (iii) a maximally preference indicating said preference element is to be selected (See Fig. 5 Preferences can receive a maximal ranking); (iv) a minimal preference (See Fig. 5 Preferences be given a minimal ranking); (b) receiving program attribute information corresponding to said at least one of audio and video (See Fig. 4 Step 34 Col. 6 lines 17-52); and (c) selecting, in response to receiving said user attribute information and said program attribute information, at least one of said audio and video based upon said preference elements (See Col. 6 lines 17-52). Graves fails to disclose where the minimal preference indicates said preference element is not to be selected. However, having a user reject certain preferences that contribute the to the

ranking of a program is well known in the art as taught by Herz (See Col. 10 lines 51-60). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Graves so that weights could take on the value of zero thereby allowing a user to reject certain preferences used to evaluate programs as taught by Herz in order to give the user more control in evaluating programs.

12. Regarding claim 18, Graves modified with Herz teaches said user attribute information including preference elements characterized by at least one additional preference (See Herz Col. 10 lines 51-60 weights can take on values 0-10 and negative values. This is more than five values).

13. Regarding claim 40, Graves teaches wherein said characteristic includes said the number of times that a preselected set of preferences, corresponds with said program attribute information, wherein said at least one of said audio and video receives a higher ranking with an increasing said number (See Col. 5 lines 6-9 See Col. 8 Eqn. 1 The amount of time an actor is on screen determines the A value. The higher the A value, the higher the x value (ranking)), further characterized by: (a) said preselected set of preferences includes a first preference and a second preference, wherein said ranking is based upon an or functionality between said first preference and said second preference (See Fig. 5 Col. 8 lines 5-68, Col. 9 lines 3, See Col. 8 37-43). Graves differs from the claimed invention in that Graves system typically weights and adds up all of said preferences $i = (1 \text{ to } n)$. However, having a user reject certain preferences that contribute to the ranking of a program is well known in the art see Herz (See Col. 10 lines 51-60). Thus, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify Graves so that weights could take on the value of zero thereby allowing a user to select a set of preference categories to be used to evaluate programs as taught by Herz to give the user more control evaluating programs.

14. Regarding claim 41, Graves modified with Herz teaches wherein said program attribute information includes preference values indicating the amount of said preferences (See Graves Col. 4 lines 64-68, Col. 5 lines 1-5).

15. Regarding claim 42, Graves modified with Herz teaches wherein said preference values are used as the basis of said ranking said at least one of audio and video (See Graves Col. 8 lines 5-65).

16. Regarding claim 43, Graves modified with Herz teaches wherein said ranking includes just slightly more is better combination (See Graves Col. 6 lines 17-52 Choosing programs with a larger grade is the same as a just slightly more is better combination).

17. Regarding claim 44, Graves modified with Herz teaches wherein said ranking includes a strong preference is better combination (See Graves Col. 8 Eqn. 1 A strong preference would make a weight higher which in turn would give a higher ranking to a program).

18. Regarding claim 45-49, claims 45-49 are analyzed and rejected in discussion with claims 40-44, respectively.

19. Regarding claim 50, Graves teaches a method for selecting at least one of audio and video comprising (See Abstract): (a) receiving user attribute information corresponding to user preferences (See Col. 5 lines 44-68, Col. 6 lines 1-16); (b)

receiving program attribute information corresponding to said at least one of a first audio and first video (See Fig. 4 Step 34 Col. 6 lines 17-52); (c) receiving program attribute information corresponding to said at least one of a second audio and second video (See Fig. 4 Step 34 Col. 6 lines 17-52 This step is done for a plurality of programs); and (d) ranking said at least one of said first audio and first video, and, said at least one of said second audio and second video, in response to receiving said user attribute information and said program attribute information for said at least one of said first audio and first video, and, said at least one of said second audio and second video (See Col. 6 lines 17-52). Graves fails to disclose where program attribute weights can take on negative values wherein said negative preference results in decreasing said rankings to a lower level than would have resulted had said negative preference not been included. However, using negative program attribute weights in television program ranking systems is well known in that art as taught by Herz (See Col. 10 lines 31-63 cv is equivalent to Graves' w). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Graves so that user could assign negative values to attribute weights as taught by Herz to allow the user to express a level of aversion to a program attribute (See Herz Col. 10 lines 60-63).

20. Regarding claim 51, Graves modified with Herz teaches wherein said ranking determines said first video as more desirable for said user than said second video (See Graves Fig. 4 Step 42d Col. 6 lines 17-52).

21. Regarding claim 52, Graves modified with Herz teaches wherein said ranking determines said second video as more desirable for another user than said first video (See Graves Fig. 4 Step 42c Col. 6 lines 17-52).

22. Regarding claim 53, Graves modified with Herz teaches wherein said ranking is in a relativistic manner (See Col. 6 lines 17-52).

Claim Rejections - 35 USC § 102

Claims 10-11, 13-15, 19-25, 25-39, 60-69 are rejected under 35 U.S.C. 102(b) as being unpatentable over Graves.

23. Regarding claim 10, Graves teaches a method for selecting at least one of audio and video comprising (See Abstract): (a) receiving user attribute information corresponding to user preferences wherein said user attribute information includes a plurality of preferences (See Fig. 4 Step 36 Col. 4 lines 41-51 Col. 6 lines 17-52); (b) receiving a first plurality of program attribute information corresponding to said at least one of said audio and video, where said plurality of said first program attribute information corresponds with said user preferences, where at least one of said plurality of said user attribute information and said first program attribute information includes hierarchical levels so that data at a second level is included with data at a first level (See Fig. 4 Step 34, Fig. 8 Col. 6 lines 17-52, Col. 8 lines 5-65) (c) receiving a second program plurality of attribute information corresponding to said at least one of said audio and video, where said plurality of said second program attribute information corresponds with said user preferences, where at least one of said user attribute information and said plurality of said second program attribute information includes

hierarchical levels so that data at a second level is included with data at a first level (See Fig. 4 Step 34, Fig. 8 Col. 6 lines 17-52, Col. 8 lines 5-65); and (d) determining the desirability of said at least one of said audio and video based upon a relative ranking between said first program attribute information and said second program attribute information (See Col. 6 lines 17-52).

24. Regarding claim 11, Graves teaches wherein said determining the desirability includes: (a) calculating a first ranking value for said first program attribute information (See Col. 6 lines 17-52, Col. 8 Eqn. 1); (b) calculating a second ranking value for said second program attribute information (See Col. 6 lines 17-52, Col. 8 Eqn. 1); and (c) determining said relative ranking based upon said first ranking value and said second ranking value (See Col. 6 lines 17-52).

25. Regarding claim 13, Graves teaches wherein said determining the desirability includes and operation where, (a) said first program attribute information includes a first attribute and free from a second attribute (See Fig. 3, Fig. 5, Col. 4 lines 52-67, Col. 5 lines 1-62 Attributes are independent of one another. For example, Story Appeal is rated separately from Actor #1); (b) said second program attribute information includes said first attribute and said second attribute (See Fig. 3, Fig. 5 A second program could contain both attributes i.e. Story appeal and Actor #1); and (c) said determining said relative ranking indicates said second program as more desirable than said first program (See Col. 6 lines 17-52 Col. 8 Eqn. 1 Based on the weighting and values of each attribute a second program could receive a higher ranking than a first program).

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26. Regarding claim 14, Graves teaches wherein said determining the desirability includes and operation where, (a) said first program attribute information includes a first attribute and free from a second attribute (See Fig. 3, Fig. 5, Col. 4 lines 52-67, Col. 5 lines 1-62 Attributes are independent of one another. For example, Story Appeal is rated separately from Actor #1); (b) said second program attribute information includes said first attribute and a relatively smaller presence of said second attribute in comparison to said first attribute (See Fig. 3, Fig. 5 A second program could have a smaller value for one attribute versus another i.e. Actor #1 has a smaller value than Story appeal); and (c) said determining said relative ranking indicates said second program as more desirable than said first program (See Col. 6 lines 17-52 Col. 8 Eqn. 1 Based on the weighting and values of each attribute a second program could receive a higher ranking than a first program).

27. Regarding claim 15, Graves teaches wherein said determining the desirability includes and operation where, (a) said first program attribute information includes a first attribute and a second attribute, where said second attribute has a first relatively smaller presence than said first attribute in said first program (See Fig. 3, Fig. 5 A program could have a smaller value for one attribute versus another i.e. Actor #1 has a smaller value (weight) than Story appeal); (b) said second program attribute information includes said first attribute and said second attribute, where said second attribute has a second relatively smaller presence than said first attribute in said second program, where said first relatively smaller presence is smaller than said second relatively smaller presence (See Fig. 3, Fig. 5 A program could have a smaller value for one attribute

versus another i.e. Actor #1 has a smaller value(weight) than Story appeal and a program could have a smaller value for an attribute when compared to that value for that attribute of another program); and (c) said determining said relative ranking indicates said second program as more desirable than said first program (See Col. 6 lines 17-52 Col. 8 Eqn. 1 Based on the weighting and values of each attribute a second program could receive a higher ranking than a first program).

28. Regarding claim 19, Graves teaches a method for selecting at least one of audio and video comprising: (a) receiving user attribute information corresponding to a plurality of user preferences, wherein said user attribute information includes hierarchical levels so that data at a third level is included with data at a second level which is included with data at a first level (See Fig. 4 Step 34, Fig. 8 Col. 6 lines 17-52, Col. 8 lines 5-65 x); (b) receiving programs attribute information corresponding to said at least one of a first audio and first video (See Fig. 4 Step 34 Col. 6 lines 17-52); (c) receiving program attribute information corresponding to said at least one of a second audio and second video (See Fig. 4 Step 34 Col. 6 lines 17-52); and (d) ranking said at least one of said first audio and first video, and, said at least one of said second audio and second video, in response to receiving said user attribute information in said hierarchical levels and said program attribute information for said at least one of said first audio and first video, and, said at least one of said second audio and second video, based upon less than all of said first, second and third hierarchical levels (See Col. 4 lines 64-68, Col. 5 lines 1-5, Col. 6 lines 17-52, Col. 8 Eqn. 1).

29. Regarding claim 20, Graves teaches wherein said ranking determines said first video as more desirable for said user than said second video (See Col. 6 lines 17-52 Col. 8 Eqn. 1 Based on the weighting and values of each attribute a first program could receive a higher ranking than a second program).

30. Regarding claim 21, Graves teaches wherein said ranking determines said second video is more desirable for another user than said first video (See Col. 6 lines 17-52 Col. 8 Eqn. 1 Based on the weighting and values of each attribute a second program could receive a higher ranking than a first program).

31. Regarding claim 22, Graves teaches wherein said less than all of said hierarchical levels includes a single branch (See Col. 8 Eqn. 1, If $n = 1$ Top level (x) would only have one branch).

32. Regarding claim 23, Graves teaches wherein said less than all of said hierarchical levels includes a plurality of branches (See Col. 8 Eqn. 1, If $n > 1$ Top level (x) would have a plurality of branches).

33. Regarding claim 24, Graves teaches wherein said less than all of said hierarchical levels are ranked based upon a relativistic manner (See Col. 6 lines 17-52).

34. Regarding claim 25, Graves teaches a method for selecting at least one of audio and video comprising: (a) receiving user attribute information corresponding to user preferences, wherein said user attribute information includes a plurality of preference values (See Abstract Col. 5 lines 44-67, Col. 6 lines 1-16); (b) receiving program attribute information corresponding to said at least one of an audio and a video, so that said hierarchical levels include data at a second level included with data at a first level

(See Fig. 4 Step 34 Col. 6 lines 17-52); and (c) evaluating said user attribute information and said program attribute information by determining: (i) a first score when a portion of said user attribute information matches a portion of said program attribute information and said first score is based at least in part upon one of said preference values (See Col. 8 Eqn 1 A first score is calculated, $i = 1$); (ii) a second score when another portion of said user attribute information matches another portion of said program attribute information and said second score is based at least in part upon one of said preference values (See Col. 8 Eqn 1 A second score is calculated, $i = 2$); (iii) a composite score based, at least in part, upon said sorts score and said second score (See Col. 8 Eqn 1 Scores are added).

35. Regarding claim 26, Graves teaches wherein said evaluating is free from combining multiple preference values into a single composite preference value (See Col. 8 Eqn 1. Preference values are combined to make a composite score not a single composite preference value).

36. Regarding claim 27, Graves teaches wherein a said composite score is determined for a plurality of said videos, and said video are ranked based, at least in part, upon said composite scores. (See Col. 6 lines 17-52).

37. Regarding claim 28, Graves teaches wherein said composite score is determined free from comparing said first score and said second score (See Col. 8 Eqn 1 The composite score is the sum of the first score and the second score. Summing is free from comparison).

38. Regarding claim 29, Graves teaches a method for selecting at least one of audio and video comprising (See Abstract): (a) receiving user attribute information corresponding to user preferences, wherein said user attribute information includes a plurality of preferences that are arranged with hierarchy levels to form a preference template where a plurality of said preferences includes a preference test and a preference value, so that said hierarchical levels include data at a second level included with data at a first level (See Fig. 4 Step 34, Fig. 8 Col. 6 lines 17-52, Col. 8 lines 5-65); (b) receiving program attribute information corresponding to said at least one of an audio and a video (See Fig. 4 Step 34 Col. 6 lines 17-52); and (c) evaluating said user attribute information and said program attribute information by determining: (i) a first score when a portion of said user attribute information matches a portion of said program attribute information and said first score is weighted based upon the respective said preference values (See Col. 7 lines 37-68, Col. 8 lines 1-51 First score is determined when $i = 1$ in Equation 1); (ii) a second score when another portion of said user attribute information matches another portion of said program attribute information and said second score is weighed based upon the respective said preference values (See Col. 7 lines 37-68, Col. 8 lines 1-51 Second score is determined when $i = 2$ in Equation 1); (iii) a composite score based, at least in part, upon said first score and said second score (See Col. 7 lines 37-68, Col. 8 lines 1-51 Eqn. 1. Composite score is the sum); (iv) repeating steps (i)-(iii) for a plurality of said program attribute information (See Col. 8 Eqn. 1 i can equal any multiple of two); (v) sorting at least one of said audio and

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video associated with said programs attribute recommendations (See Col. 6 lines 17-52).

39. Regarding claim 30, Graves teaches wherein said evaluating is free from combining multiple preference values into a single composite preference value (See Col. 8 Eqn 1. Preference values are combined to make a composite score not a single composite preference value).

40. Regarding claim 31, Graves teaches wherein a said composite score is determined for a plurality of said videos, and said video are ranked based, at least in part, upon said composite scores (See Col. 6 lines 17-52).

41. Regarding claim 32, Graves teaches wherein said composite score is determined free from comparing said first score and said second score (See Col. 8 Eqn 1 The composite score is the sum of the first score and the second score. Summing is free from comparison).

42. Regarding claim 33, Graves teaches a method for selecting at least one of audio and video comprising (See Abstract): (a) receiving user attribute information corresponding to a plurality of user preferences, wherein said user attribute information includes hierarchical levels so that data at a third level is included with data at a second level which is included with data at a first level (See Fig. 4 Step 34, Fig. 8 Col. 6 lines 17-52, Col. 8 lines 5-65); (b) receiving program attribute information corresponding to said at least one of a first audio and first video (See Fig. 4 Step 34 Col. 6 lines 17-52); (c) receiving program attribute information corresponding to said at least one of a second audio and second video (See Fig. 4 Step 34 Col. 6 lines 17-52); and (d)

comparing in a relativistic manner said at least one of said first audio and first video, and, said at least one of said second audio and second video, in response to receiving said user attribute information in said hierarchical levels and said program attribute information for said at least one of said first audio and first video, and, said at least one of said second audio and second video, based upon less than all of said first, second, and third hierarchical levels (See Col. 4 lines 64-68, Col. 5 lines 1-5, Col. 6 lines 17-52, Col. 8 Eqn. 1 Programs are ranked based on grade, x. This is only one level in the hierarchy. Ranking based on one level out of two is ranking based on less than all levels. Also, if programs receive the same grade the one that has been stored longer receives a lower rank).

43. Regarding claim 34 Graves teaches wherein said comparing determines said first video as more desirable for said user than said second video (See Col. 6 lines 17-52 Col. 8 Eqn. 1 Based on the weighting and values of each attribute a first program could receive a higher ranking than a second program).

44. Regarding claim 35, Graves teaches wherein said comparing determines said second video as more desirable for another user than said first video (See Col. 6 lines 17-52 Col. 8 Eqn. 1 Based on the weighting and values of each attribute a second program could receive a higher ranking than a first program).

45. Regarding claim 36, Graves teaches wherein said less than all of said hierarchical levels includes a single branch (See Col. 8 Eqn. 1, If n =1 Top level (x) would only have one branch).

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46. Regarding claim 37, Graves teaches wherein said less than all of said hierarchical levels includes a plurality of branches (See Col. 8 Eqn. 1, If $n > 1$ Top level (x) would have a plurality of branches).

47. Regarding claim 38, Graves teaches wherein said less than all of said hierarchical levels are ranked based upon a relativistic manner (See Col. 6 lines 17-52).

48. Regarding claim 39, the USPTO considers the applicant's "at least one of" language to be anticipated by any reference containing any of the subsequent corresponding elements. Graves teaches a method for selecting at least one of audio and video comprising (See Abstract): (a) receiving user attribute information corresponding to user preferences, wherein said user attribute information includes a plurality of preferences, wherein said user information includes hierarchical levels so that data at a second level is included with data at a first level (See Col. 5 lines 44-68, Col. 6 lines 1-16); (b) receiving program attribute information corresponding to said at least one of an audio and video (See Fig. 4 Step 34 Col. 6 lines 17-52); (c) ranking said at least one of said audio and video, in response to receiving said user attribute information and said program attribute information for said at least one of said audio and video, based upon at least one of the following characteristics: (i) the number of times that one of said preferences corresponds with said program attribute information, wherein said at least one of said audio and video receives a higher ranking with an increasing said number (See Col. 5 lines 6-9 See Col. 8 Eqn. 1 The amount of time an actor is on screen determines the A value. The higher the A value, the higher the x value (ranking)); (ii) the number of times that a preselected set of preferences, less than

all of said preferences, corresponds with said program attribute information, wherein said at least one of said audio and video receives a higher ranking with an increasing said number; (iii) the number of times that one of said preferences corresponds with said program attribute information, wherein said at least one of said audio and video receives a higher ranking with a decreasing said number; (iv) the number of times that a preselected set of preferences, less than all of said preferences, corresponds with said program attribute information, wherein said at least one of said audio and video receives a higher ranking with a decreasing said number.

49. Regarding claim 57, Graves teaches a method for selecting at least one of audio and video comprising (See Abstract): (a) receiving user attribute information corresponding to user preferences, wherein said user attribute information includes a plurality of preferences, wherein said user information includes hierarchical levels so that data at a second level is included with data at a first level (See Col. 5 lines 44-68, Col. 6 lines 1-16); (b) receiving program attribute information corresponding to said at least one of an audio and video (See Fig. 4 Step 34 Col. 6 lines 17-52); (c) evaluating said user attribute information and said program attribute information by: (i) determining a first value based upon, at least in part, a first portion of said user attribute information matches a portion of said program attribute information (See Col. 6 lines 17-52 Col. 8 Eqn. 1 programs are evaluated for attributes i=1 to n. The value for i=1 is the first value), and (ii) determining a second value based upon, at least in part, a second portion of said user attribute information matches a portion of said program attribute information (See Col. 6 lines 17-52 Col. 8 Eqn. 1 programs are evaluated for attributes

i=1 to n The value for i=2 is the second value); (d) discarding said at least one of said audio and video, in response to receiving said user attribute information and said program attribute information for said at least one of said audio and video, as a desirable said at least one of audio and video for said user based upon if at least one of said first value or said second value indicates non-desirability of said at least one of audio and video (See Col. 6 lines 17-52 The program with the lowest grade is discarded); (e) if said at least one of audio and video is not discarded as a result of step (d) then determining a third value based upon, at least in part, said first value and said second value (See Col. 6 lines 46-49 If two programs share a common grade one program the time the two programs have been stored is compared. The length of time a program is stored is based on the programs grade compared to other programs. The grade is based on the first value and the second value. Thus, the time a program is stored is based upon the first value and second value).

50. Regarding claim 60, Graves teaches a method for selecting at least one of audio and video comprising (See Abstract): (a) receiving user attribute information corresponding to user preferences, wherein said user attribute information includes hierarchical levels, wherein said user attribute information includes a plurality of preferences wherein said user information includes said hierarchical levels so that data at a second level is included with data at a first level (See Fig. 4 Step 34, Fig. 8 Col. 6 lines 17-52, Col. 8 lines 5-65 x (Top level) is determined based on sum of A's (lower level); (b) receiving program attribute information corresponding to said at least one of an audio and a video (See Fig. 4 Step 34 Col. 6 lines 17-52); and (c) evaluating said at

least one of said audio and video, in response to receiving said user attribute information and said program attribute information based upon, (i) a first set of a plurality of preferences wherein said first set is evaluated based upon a first operator (See Col. 8 lines 5-68, Col. 9 lines 1-3); (ii) a second set of a plurality of preferences wherein said second set is evaluated based upon a second operator (See Col. 8 lines 5-68, Col. 9 lines 1-3); (iii) wherein said first set and said second set are evaluated independent of the number of preferences of said first set and said second set (See Col. 8 lines 5-68, Col. 9 lines 1-3 First set and second set are simply partitions of Graves elements 1 to n such partitioning does not effect outcome of Graves' equation. Thus, the limitations of this claim are anticipated by Graves).

51. Regarding claim 61, Graves teaches wherein at least one of said first operator and said second operator is an "OR" function (See Col. 8 Eqn. 1). From the specification the "OR" function is a summation (Page 135 line 1).

52. Regarding claim 62, Graves teaches wherein said first operator and said second operator are "OR" functions (See Col. 8 Eqn. 1).

53. Regarding claim 63, Graves teaches wherein said first set and said second set depend from the same preference within said hierarchy (See Col. 8 Eqn. 1The first set and second set are on the same level of the hierarchy and depend from the overall preference).

54. Regarding claim 64, Graves teaches wherein said first set and said second set have a different number of preferences (See Col. 8 Eqn. 1 i values 1 to n could be an odd number divided into two sets).

55. Regarding claim 65 Graves teaches a method for selecting at least one of audio and video comprising (See Abstract): (a) receiving user attribute information corresponding to user preferences, wherein said user attribute information includes hierarchical levels, wherein said user attribute information includes a plurality of preferences said user information includes said hierarchical levels so that data at a second level is included with data at a first level (See Fig. 4 Step 34, Fig. 8 Col. 6 lines 17-52, Col. 8 lines 5-65 x (Top level) is determined based on sum of A's (lower level)); (b) receiving program attribute information corresponding to said at least one of an audio and a video (See Fig. 4 Step 34 Col. 6 lines 17-52); and (c) evaluating said at least one of said audio and video, in response to receiving said user attribute information and said program attribute information based upon, (i) a first set of a plurality of preferences wherein said first set is evaluated based upon a first operator (See Col. 8 lines 5-68, Col. 9 lines 1-3); (ii) a second set of a plurality of preferences wherein said second set is evaluated based upon a second operator (See Col. 8 lines 5-68, Col. 9 lines 1-3); (iii) wherein said first set and said second set are evaluated based on a ratio functionality (See Col. 8 lines 5-68, Col. 9 lines 1-3 First set and second set are simply partitions of Graves elements 1 to n such partitioning does not effect outcome of Graves' equation. Each set is evaluated by weighing and adding individual elements of the set. This is ratio functionality. Thus, the limitations of this claim are anticipated by Graves).

56. Regarding claim **66**, Graves teaches wherein at least one of said first operator and said second operator is an "OR" function (See Col. 8 Eqn. 1). From the specification the "OR" function is a summation (Page 135 line 1).

57. Regarding claim **67**, Graves teaches wherein said first operator and said second operator are "OR" functions (See Col. 8 Eqn. 1).

58. Regarding claim **68**, Graves teaches wherein said first set and said second set depend from the same preference within said hierarchy (See Col. 8 Eqn. 1 See Col. 8 Eqn. 1 The first set and second set are on the same level of the hierarchy and depend from the overall preference).

59. Regarding claim **69**, Graves teaches wherein said first set and said second set have a different number of preferences (See Col. 8 Eqn. 1 i values 1 to n could be an odd number divided into two sets).

60. Claim **59** are rejected under 35 U.S.C. 103(a) as being unpatentable over Graves.

61. Regarding claim **59**, Graves teaches wherein said evaluating is based upon a summation operation (See Col. 8 Eqn. 1). From the specification the AND function is an averaging function (Page 131 lines 13-14), the result of Graves summation divided by the number of elements summed (n). The examiner takes Official Notice that averaging to normalize a set of numbers is well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Graves so that the result of his summation equation was divided by the number of elements added together to create normalized grades.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamieson W. Fish whose telephone number is 571-272-7307. The examiner can normally be reached on Monday-Friday, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JF 12-22-2005


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